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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5224 OF 2005

M/s. Shah Developers, a partnership firm duly registered under the Indian Partnership Act, 1932, carrying on business at 206, Bhola Bhagwan Industries, I.B. Patel Road, Goregaon (E), Mumbai - 400 063. .. Petitioner (Orig. Defendant 2)

Versus

1. State of Maharashtra

2. Shri Devendra Bhagwandas Shah having his office at Shop No.11, Arihant Towers, Sai Baba Nagar, Mira Road (East), - 401 702. .. Orig.Plaintiff

3. Shri Rajendra Chimanlal Shah residing at 156/11, Paradise Jain Society, Sion (West), Mumbai - 44. ..Org.Defendant 1

4. The Municipal Commissioner, Mira Bhayander, Mahanagar Palika, Bhayander (West), Dist. Thane. ..Orig. Defendant No.3

.. Respondents

Mr. S.H. Doctor i/b Mr. J.B. Patel for the petitioner.

Mr. Hanif Solkar, A.G.P. for the State.

Mr. Shailesh Shah for respondent 2.

Mr. R.S. Apte for respondent 4.

CORAM: SMT. RANJANA DESAI, J.

DATED: 31ST AUGUST, 2005.

P.C.:-

1. The petitioner is original defendant 2 in Special Civil Suit No.226 of 2005 filed in the court of Civil

Judge, Senior Division, Thane. Respondent 2 is the plaintiff and respondent 3 is defendant 1. The plaintiff's case is that the plaintiff and defendant 1 are partners of M/s. Arihant Developers, carrying on business as Builders and Developers. According to the plaintiff, he has 25% share, defendant 1 has 70% share and one Suresh Kannaiyalal Shah has 5% share in the said partnership business. According to the plaintiff, the said firm is still in existence. The plaintiff further contends that in October, 1999, the plaintiff and defendant 1 constituted another partnership firm of Builders and Developers under the name and style of M/s. Shah Developers, vide partnership deed dated 20/10/1999 and in that business, the plaintiff has 30% share and defendant 1 has 70% share. The said partnership deed is notarised. It is at Ex-3/1. The said firm is in existence till today. In April, 2000, the plaintiff along with defendant 1 decided to purchase immoveable property bearing Survey No.163, Hissa No.1(Part) admeasuring 48,000 sq. ft. at Village Mira, Taluka and District Thane and the said partnership firm of M/s. Shah Developers agreed to develop the said property. According to the plaintiff, the plaintiff and defendant 1 paid an amount of Rs.10,97,000/- as part payment of total consideration for the development of the said property. This amount was paid from the account of M/s. Arihant Developers. It is the case of the plaintiff that defendant 1 with malafide intention, behind the back of the plaintiff, entered into two development agreements

with the land owners on 17/6/2003. These agreements were signed by one M. C. Shah on behalf of M/s. Shah Developers. Defendant 2 got the plans sanctioned and started construction of the Paradise Complex. The plaintiff's sent a notice to which there was no reply. Defendant 1 gave assurance that he would give him 30% share in the profits after sale of flats in the Paradise Complex. However, he failed to do so. Hence, the instant suit came to be filed.

2. The plaintiff filed the instant suit, inter alia, for a declaration that he has 30% share in the partnership business of M/s. Shah Developers and for an order directing defendants 1 and 2 to pay 30% of the sale proceeds of the flats to him. The plaintiff filed an application praying for an order of injunction restraining defendants 1 and 2 from carrying on further construction. The trial court granted the said application and, hence, this writ petition.

3. I have heard, at considerable length, Mr. Doctor, the learned counsel appearing for the petitioner. He contended that the partnership deed dated 20/10/1999 is a fabricated and got up document. There was no partnership deed between the plaintiff and defendant 1 creating a partnership firm in the name and style of M/s. Shah Developers. He contended that the signature of defendant 1 on the said deed is forged. The plaintiff has not produced any bank accounts of the said firm. No evidence

is produced to substantiate the claim of existence of the said firm. The firm is not registered. No accounts have been filed. He submitted that, therefore, the very existence of the firm is not proved.

4. Mr. Doctor pointed out that in fact M/s. Shah Developers is constituted under a partnership deed dated 4/5/2003 entered into between Mahendra Shah and Smt. Meghana Shah and the said firm has no connection with the alleged partnership deed dated 20/10/1999. It is, M/s. Shah Developers, which is constituted under the partnership deed dated 4/5/2003, which has entered into two development agreements (Ex-3/1 and 3/2) on 17/6/2003. He submitted that an amount of Rs.5 lacs was paid from the account of M/s. Arihant Developers but it was returned back to the said firm by the land owners. The plaintiff is not concerned with the suit land or its development and, hence, the defendants cannot be restrained from developing the suit property. In support of his contention, Mr. Doctor relied on the judgment of the Supreme Court in **M/s. Gujarat Bottling Co. Ltd. v. Coca Cola Company AIR 1995 SC 2372**. He drew my attention to the observation of the Supreme Court that the object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. Mr. Doctor contended that in this case, the plaintiff is claiming

only 30% share in the profits. In the light of the observations of the Supreme Court in **M/s. Gujarat Bottling Co. Ltd.'s case (supra)**, he contended that the plaintiff can be adequately compensated in terms of money and for that, the entire construction cannot be stalled.

5. The learned counsel for the respondents on the other hand submitted that the partnership deed dated 20/10/1999 is genuine. It is signed by the plaintiff and defendant 1. It is a notarised document. He submitted that the fact that a huge amount was paid to the land owners from the account of M/s. Arihant Developers itself establishes that the plaintiff is, in fact, defendant 1's partner in M/s. Shah Developers and it is that firm which has undertaken the development work and the plaintiff is now being deprived of the profits. He submitted that the impugned order does not deserve any interference by this court.

6. The question involved in this case is whether agreement dated 20/10/1999 is a genuine document or it is a fabricated document and whether the signature of defendant 1 on the said document is forged. These questions could obviously be decided only at the trial of the suit. However, admittedly in M/s. Arihant Developers, the plaintiff and defendant 1 are partners. Prima facie, it appears to me that there is nothing to indicate that that partnership is dissolved. It is true that in respect of partnership firm allegedly constituted

under partnership deed dated 20/10/1999, no evidence in the form of bank accounts or particulars of transactions of the said firm, etc. are produced at least till today and the said deed is also not registered and is only notarised. Defendant 1 has come out with a case that M/s. Shah Developers is constituted under the partnership deed dated 4/5/2003 entered into between M.C. Shah and Meghana Shah. Prima facie, it appears to me that if as contended by the petitioner and defendant 1, the partnership firm is constituted under the partnership deed dated 4/5/2003 and it is an independent firm which has undertaken the development work, then it is not understood as to why an amount of Rs.5 lacs was drawn from the account of M/s. Arihant Developers to pay to the land owners. According to the plaintiff, more than Rs.10 lacs were drawn from the said account. It is true that Rs.5 lacs have been deposited in M/s. Arihant Developer's account. But the learned counsel for the plaintiff has pointed out that the money was drawn from M/s. Arihant Developers' account in Bassein Catholic Co-op. Bank Ltd., Mira Road Branch but it has been deposited in the current account of M/s. Arihant Developers in the branch of Jammu and Kashmir Bank at Mira Road and the said account is being operated only by defendant 1. He has given instructions accordingly to the said bank. The learned counsel for the petitioner, on the other hand, pointed out that some part of Rs.5 lacs has been deposited in the Bassein Catholic Co-op. Bank. Ltd., Mira Road Branch and the remaining amount is

deposited in the Jammu and Kashmir Bank. The fact that a huge amount has been withdrawn from M/s. Arihant Developers account, prima facie, indicates that the defendant's case that the plaintiff has nothing to do with the development project, is not true. If M/s. Shah Developers, constituted under the partnership deed dated 4/5/2003, has undertaken the development work then, there was no reason for it to withdraw the money from M/s. Arihant Developers. However, in my opinion, the entire construction cannot be stalled because even according to respondent 1, he has only 30% share in the profit. Therefore, the trial court's order whereby the entire construction is stalled needs to be varied. At this stage, the plaintiff needs to be protected to the extent possible.

7. I have been shown three tables pertaining to "A", "B" and "C" Wings of the Paradise Complex constructed by the petitioner. At the foot of every table certain flats have been shown as not having been dealt with. In my opinion, the plaintiff will be protected if the said flats are not sold during the pendency of the suit and a direction is given to the trial court to dispose of the suit as expeditiously as possible and, at any rate, within a period of one year from the date of receipt of this order by it. Hence the following order.

8. Special Civil Suit No.226 of 2005 pending before the court of Civil Judge, Senior Division, Thane, is

expedited. The trial court is directed to hear and dispose of the suit as early as possible and, at any rate, within a period of one year from the date of receipt of this order by it. The tables handed over by the petitioner's counsel are taken on record and marked 'X' (Colly.) The flats shown at the foot of the table pertaining "A", "B" and "C" Wings cannot be sold by the petitioner during the pendency of the suit.

9. The learned counsel for the respondent 3 states that the petitioner be directed to file accounts in a sealed cover. Respondent 3 may make such an application before the trial court and the trial court may pass appropriate orders thereon after hearing the parties.

10. All observations made by me are prima facie observations. I have not expressed any opinion on the merits of the case of either parties and the trial court shall dispose of the suit on its own merit. All contentions of both sides are kept open.

11. Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)